MOTION FILED
JUN 13 1983

No. 81-2332

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY,
a political subdivision of the Commonwealth of Virginia,
Petitioner,

v.

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY
OF VIRGINIA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF THE BROOKLYN UNION GAS COMPANY AND BRIEF AMICUS CURIAE

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June 13, 1983

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Pursuant to Rule 36.3, The Brooklyn Union Gas Company (Brooklyn Union) hereby respectfully moves for leave to file the attached brief as *amicus curiae* in this case. The consent of counsel for the respondent has been obtained. Counsel for the petitioner has objected.

I.

STATEMENT OF INTEREST

Brooklyn Union is a natural gas distribution utility which provides service to more than one-half of the City of New York. Approximately 4,000,000 people reside in Brooklyn Union's service area which encompasses all or part of the Boroughs of Brooklyn, Staten Island and Queens. Brooklyn Union's service area is comprised pre-

dominantly of low-middle-income and low-income residential customers who find it increasingly difficult to afford natural gas for cooking and residential heating purposes.

As a public utility operating under the laws of the State of New York, Brooklyn Union has a statutory obligation to provide natural gas to its customers at the lowest reasonable rates. *See* N.Y. Public Service Law § 65 (McKinney 1955 and Supp. 1982-83). As part of this public service obligation, Brooklyn Union has a duty to its ratepaying customers to take such steps as may be necessary to obtain reimbursement for the costs of forced relocation of its gas distribution facilities caused by the implementation of federally funded projects similar to that at issue in the present case. Unless utilities such as Brooklyn Union receive reimbursement for these costs, their only recourse is to recover them through an increase in the rates charged to their customers. Because the petitioner has challenged the decision of the Court of Appeals allowing recovery of utility relocation expenses under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. §§ 4601-4655 (URA), Brooklyn Union and its customers may be adversely and directly affected by the outcome of this case.

II.

REASONS FOR GRANTING THE MOTION

The Court of Appeals held that a public utility is a "displaced person" under the URA and as such is entitled to reimbursement for the costs associated with the relocation of its distribution facilities necessitated by a federally funded urban renewal project. In so holding, the Court of Appeals recognized the broad intent of Congress to establish a uniform system of compensation for all persons displaced as a result of federally assisted projects designed to benefit the public as a whole. Reversal of the Court of Appeals' decision will have serious and far-reaching economic consequences for numerous public utilities and their customers. Unless the decision below is affirmed, utility customers will continue to bear a dispro-

portionate share of the costs of public projects from which they receive no special benefits.[1]

The respondent has consented to Brooklyn Union's filing of a brief *amicus curiae*. At this time, however, it is unclear whether the respondent can be expected to advance generally the interests of Brooklyn Union and other public utilities forced to incur relocation expenses under circumstances clearly contemplated by the URA but arguably beyond the scope of the Fourth Circuit's decision and the respondent's position in this case.[2] For this reason, Brooklyn Union has a unique and important perspective on this issue which should be useful to the Court's deliberations.

III.

CONCLUSION

For the reasons stated above, The Brooklyn Union Gas Company respectfully requests the Court to grant this motion so that Brooklyn Union may present its views in the attached brief.

Respectfully submitted,

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[1] Brooklyn Union competes with fuel oil companies whose customers receive the benefits of public works projects but are not burdened with the costs.

[2] *See* Brief In Opposition To Petition For Certiorari, filed by The Chesapeake And Potomac Telephone Company of Virginia herein, at 1-2.

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BRIEF AMICUS CURIAE OF THE BROOKLYN UNION GAS COMPANY IN SUPPORT OF RESPONDENT

INTEREST OF AMICUS CURIAE

The Brooklyn Union Gas Company (Brooklyn Union) is a natural gas distribution utility which provides service to more than one-half of the City of New York. Approximately 4,000,000 people reside in Brooklyn Union's service area which encompasses all or part of the Boroughs of Brooklyn, Staten Island and Queens. Brooklyn Union's customers are predominantly low-middle-income and low-income customers who use natural gas for home heating and cooking.[1] Due to substantial increases in the cost of

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[1] A study completed by Brooklyn Union's Corporate Planning Department in May 1983, based on 1980 United States census data, showed that the average income per household in Brooklyn Union's service territory in 1979 was approximately $17,300. That study

natural gas purchased at the wellhead, Brooklyn Union's residential rates have increased markedly in recent years. As a consequence, many of Brooklyn Union's customers find it increasingly difficult to afford natural gas for even the most fundamental and essential purposes.

As a public utility operating under the laws of the State of New York, Brooklyn Union has a statutory obligation to provide natural gas to its customers at the lowest reasonable rates. N.Y. Public Service Law § 65 (McKinney 1955 and Supp. 1982-83). If Brooklyn Union cannot obtain reimbursement for the costs associated with the relocation of its distribution facilities, these costs must be added to its rates and passed on to its customers. It is these customers who must bear the burden of increased rates brought about by the construction and installation of federally funded public works projects.[2] Even though in some cases the public works projects may provide Brooklyn Union's customers with no direct benefits, it is these customers who must pay a significant share of the costs. Brooklyn Union thus stands in the shoes of its many low-income customers who, if forced to pay relocation costs, will suffer increased hardship due to federally funded public works projects.

The Court of Appeals' decision[3] recognizes the intent of Congress under the Uniform Relocation Assistance

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also showed that 18.7% of the households served by the Company had an annual income of less than $5,000; 17.9% an income of $5,000 to $10,000; 15.9% an income of $10,000 to $15,000; 13.3% an income of $15,000 to $20,000; and 34.2% an income of over $20,000.

[2] Because gross receipts and sales taxes are imposed directly on gas sales to Brooklyn Union's customers, there is a "compounding" effect when rates to customers are increased to recover increased costs and expenses. N.Y. General City Law § 20-b (McKinney 1968 and Supp. 1982-83).

[3] *Chesapeake & Potomac Telephone Co. v. Landrieu, et al.*, 674 F.2d 298 (4th Cir. 1982), *cert. granted*, 51 U.S.L.W. 3526 (U.S. Jan. 17, 1983).

and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. §§ 4601-4655 (URA), to compensate all persons displaced as a result of federally funded public works projects. Specifically, the Fourth Circuit held that a public utility is a "displaced person" under the URA and as such is entitled to compensation for the removal and replacement of its facilities where such relocation results from the acquisition of real property by a municipal agency in the execution of a federally funded urban renewal project.

Brooklyn Union supports the Court of Appeals' decision. Moreover, Brooklyn Union believes the URA provides utility relocation reimbursement for reasons not addressed by the Court of Appeals, but which clearly support respondent's position and which serve the manifest congressional purpose behind the URA. Congress intended the URA to apply with equal force to persons displaced either as a result of federally funded purchases of real property or as a result of the federally funded purchase of the right to use property in the execution of federally funded public works projects. Further, Title III of the URA also provides for alternative compensation to utilities forced to abandon or relocate their lines.

In seeking reversal of the Court of Appeals' decision, petitioner would have the Court adopt a narrow and unduly restrictive interpretation of the URA which would preclude recovery of relocation expenses by respondent or by any other public utility. Petitioner's position, if adopted by the Court, would eviscerate the URA as applied to utility customers across the country who presently shoulder a disproportionate share of the costs of federally funded public projects. Congress did not intend that result.

Accordingly, Brooklyn Union has a substantial interest in this case, will be adversely and directly affected if the decision of the Court of Appeals is reversed, and submits the present *amicus* brief in support of respondent.

ARGUMENT

I. THE COURT OF APPEALS PROPERLY HELD THAT A PUBLIC UTILITY CAN QUALIFY AS A "DISPLACED PERSON" UNDER THE URA

The URA was enacted in 1970 to provide a uniform system of compensation for those persons and businesses displaced by the relative proliferation of Federal and federally assisted public works projects. Congress recognized that traditional concepts of property valuation under state and Federal law were inconsistent and often inadequate to compensate displaced persons for the expenses encountered in relocating to new homes and places of business. *See, e.g.*, House Comm. On Public Works, *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, H.R. Rep. No. 1656, 91st Cong., 2d Sess. 2 (1970), *reprinted in* 1970 U.S. Code Cong. & Ad. News 5850, 5850-51; Senate Comm. On Government Operations, *Uniform Relocation Assistance and Land Acquisition Policies Act of 1969*, S. Rep. No. 488, 91st Cong., 1st Sess. 1-2 (1969). To establish a consistent and comprehensive national compensation policy, Congress purposely used broad definitional language to encompass all manner of situations in which Federal projects directly cause the displacement of persons or property. *See* 42 U.S.C. § 4621 (1976). The Court of Appeals read the language of the URA in consonance with this broad congressional purpose and properly held that public utilities may qualify as "displaced persons" under the Act.

Under the provisions of the URA, "displaced persons" are entitled to recover from the Government the actual reasonable expenses incurred in moving personal property from real property as a result of the acquisition of such real property for a program or project undertaken by a Federal agency or with Federal assistance. 42 U.S.C. § 4622 (1976). The URA defines displaced persons as "any person" who either moves from real property or

moves personal property from real property as the result of the acquisition of such real property for federally funded projects. 42 U.S.C. § 4601(6). The Act defines "person" as "*any* individual, partnership, corporation, or association." 42 U.S.C. § 4601(5) (emphasis added). The Act does not exclude and its legislative history does not indicate a congressional intent to exclude public utility companies from the broad coverage of the URA.

As this Court has frequently recognized: "If the statutory language is unambiguous, in the absence of 'a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.'" *United States v. Turkette*, 452 U.S. 576, 580 (1981) (quoting *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)). *See also Bread Political Action Committee v. Federal Election Commission*, 455 U.S. 577, 580-81 (1982); *United States v. Clark*, 454 U.S. 555, 560 (1982); *Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978); *Commissioner v. Brown*, 380 U.S. 563, 571 (1965). In holding that the URA applies to public utilities otherwise qualifying for compensation under the Act, the Court of Appeals properly followed this canon of statutory construction.

The literal construction adopted by the Court of Appeals finds further support in the Act's Declaration of Policy which provides:

> The purpose of this subchapter is to establish a *uniform policy* for the fair and *equitable treatment* of persons displaced as a result of Federal and federally assisted programs *in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.*

42 U.S.C. § 4621 (emphasis added). To establish a *uniform* policy, Congress certainly could not have intended that some businesses displaced by federally assisted pub-

lic projects could recover relocation expenses while other businesses, simply because they are public utilities, could not. Moreover, the disproportionate injury suffered by ratepayers as the result of utility relocation is exactly the kind contemplated by the URA. Because utilities are forced to raise their rates to recover relocation expenses, their customers are forced to bear an additional burden for a project which provides them with no special benefit. In essence, ratepayers, often with low- or fixed-incomes, are asked to subsidize a federally assisted project for the benefit of many not served by the utility. This is clearly a "disproportionate" injury caused by projects "designed to benefit the public as a whole." *Id.*

Notwithstanding the foregoing statutory provisions, petitioner argues that Congress could not have intended the Act to apply to public utilities because, under the common law still followed by many states, utilities are not entitled to relocation expenses.[4] Petitioner maintains that Congress would have expressly repealed contradictory state law had it intended to reimburse utilities. Petitioner's Brief on the Merits at 14. This argument

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[4] The common law itself is not without its exceptions. In New York, for example, if the state or a municipality closes a street in order to engage in some proprietary function, it must reimburse utilities for the costs involved in relocating their facilities. *See, e.g., Consolidated Edison Co. of New York v. Lindsay*, 24 N.Y.2d 309, 316, 248 N.E.2d 150, 152-53, 300 N.Y.S.2d 321, 325 (1969); *New York Telephone Co. v. City of Binghamton*, 18 N.Y.2d 152, 160, 219 N.E.2d 184, 186, 272 N.Y.S.2d 359, 362 (1966); *New Rochelle Water Co. v. State of New York*, 10 N.Y.2d 287, 292, 177 N.E.2d 771, 773, 220 N.Y.S.2d 809, 812 (1961); *In re Gillen Place, Borough of Brooklyn*, 304 N.Y. 215, 221, 106 N.E.2d 897, 899 (1952). Moreover, where the Federal Government takes city-owned property under its power of eminent domain, the Federal Government must pay compensation to utilities whose lines are also acquired. *United States v. 25.4 Acres of Land in Borough of Brooklyn, Kings County*, 65 F. Supp. 333, 335-37 (E.D.N.Y. 1946), *rev'd on other grounds sub nom. United States v. Brooklyn Union Gas Co.*, 168 F.2d 391 (2d Cir. 1948).

ignores the overriding purpose of the URA—to establish a uniform national system of compensation, supplementing where necessary state real property compensation law.

It was precisely because state law often denied meaningful recovery to displaced persons that Congress saw a need for federal legislation. In supporting passage of the URA, Representative Cleveland voiced this dissatisfaction with existing state law, stating: "The real root of the problem is that traditional concepts of evaluation and eminent domain have proved inadequate." 116 *Cong. Rec.* 40,169 (1970). Moreover, Senator Muskie, the Chairman of the Subcommittee that conducted the Senate hearings and a major sponsor of the URA legislation, stressed: "Our primary objective in sponsoring S. 1 is to establish a uniform policy among Federal agencies, and State and local recipients of Federal funds in their dealings with property owners and others displaced by Federal or federally aided land acquisitions." [5] Senator Muskie clearly indicated his understanding of the broad purpose of this legislation when he enunciated the first of two "fundamentally humane concepts involved in this legislation . . . ." [6]

> One, that the objective ought to be to make the displacee whole, that we ought to abandon the idea that the displacee ought for some reason to bear some of the burden of cost in these Federal programs, the implementation of which necessitates his displacement.[7]

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[5] *Uniform Relocation Assistance and Land Acquisition Policies Act of 1969: Hearings on S. 1 Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations*, 91st Cong., 1st Sess. 2 (1969). This statement was also reprinted in the Senate Report. *See* Senate Comm. On Government Operations, *Uniform Relocation Assistance and Land Acquisition Policies Act of 1969*, S. Rep. No. 488, 91st Cong., 1st Sess. 7-8 (1969).

[6] *Id.* at 36.

[7] *Id.*

When the foregoing statements are taken in conjunction with the unambiguous statutory definitions and declaration of policy contained in the URA, it is clear that Congress intended to supplant the common law insofar as it would deny relocation expenses to persons and companies, including utilities, displaced as a direct result of the acquisition of property for a Federal project. For these reasons, the Court of Appeals correctly held that a public utility can qualify as a displaced person and is entitled to relief if its claim otherwise satisfies the requirements of the URA.

II. THE URA ENTITLES PUBLIC UTILITIES TO COMPENSATION FOR RELOCATION EXPENSES CAUSED BY ACQUISITION OF REAL PROPERTY IN THE EXECUTION OF FEDERALLY ASSISTED PUBLIC WORKS PROJECTS

A. Respondent Is Entitled To Relocation Benefits For The Reasons Set Forth In The Court Of Appeals' Decision

Under the URA, relocation expenses are compensable if the removal of personal property occurs "as the result of the acquisition of . . . real property, in whole or in part . . . , for a project undertaken . . . with Federal financial assistance." 42 U.S.C. § 4601(6). The Act further provides that:

> [w]henever the acquisition of real property for a . . . project undertaken by a Federal Agency in any State will result in the displacement of any person . . . the head of such agency shall make payment to any displaced person . . . for . . . (1) actual reasonable expenses in moving . . . his . . . business . . . or other personal property.

42 U.S.C. § 4622(a)(1).

Under the facts of this case, the Fourth Circuit correctly ruled that the foregoing provisions entitle respondent to relief under the URA. In deciding for respondent,

the Court of Appeals held that a utility's distribution lines are personal property in the absence of an intent by the utility to annex its lines to the real property in which they were placed. This determination is supported by ample legal authority and is in accord with standard industry practice. Surely, respondent and the great majority of American public utilities do not intend to surrender ownership and control of their distribution facilities simply because they place them on or under realty owned by governmental entities or private citizens.

Second, relocation of respondent's lines occurred as the direct result of a federally financed acquisition of real estate. It is established that petitioner purchased—with Federal assistance—the streets in which respondent's lines were located. Following release of the City of Norfolk's remaining easements in those streets, petitioner became the owner of land without the burden of preexisting servitudes. The acquisition in fee simple of the City's streets, an essential part of petitioner's redevelopment plan, required the relocation of respondent's facilities.

Under these circumstances, the Court of Appeals properly held that respondent should be reimbursed for the reasonable expenses incurred in removing its personal property from the real property purchased by petitioner. Thus, the decision below is entitled to affirmance on its own merits and for the grounds stated therein.

B. Public Utilities Are Entitled To Compensation For Relocation Expenses Caused By The Acquisition Of The Right To Use Real Property In The Execution Of Federally Assisted Public Works Projects

In addition to the grounds on which the Court of Appeals ruled as urged by respondent before this Court, the URA entitles respondent and utilities generally to compensation where an agency acquires the right to use real property in the execution of a federally assisted public works project and the acquisition of this right to use the property forces utilities to relocate their distribu-

tion lines. While the facts in the present case involve a federally assisted acquisition of the entire fee simple title to real property, the acquisition of fee simple title to realty is not critical to recovery under the URA. Such a construction is consistent with the Act's provisions, its legislative history and this Court's interpretation of the URA.

While the URA nowhere defines "acquisition," the congressional policy behind that term necessitates a broad reading, consistent with the goal of providing relief to persons displaced as a result of federally assisted projects. This is evident from the Act's Declaration of Policy, which does not even use the word "acquisition" but instead simply states: "The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced *as a result of* Federal or federally assisted programs. . . ." 42 U.S.C. § 4621 (emphasis added). The language, "as a result of," shows that Congress was concerned with the practical effects of federally assisted projects rather than with vagaries of real property law.

Further, this Court has recognized that Section 101(6) of the Act "does not . . . require that an agency anticipate obtaining title to the property. The legislative history demonstrates that Congress focused on the eventual right to use property, not on an agency's mode of procurement." *Alexander v. United States Department of Housing and Urban Development*, 441 U.S. 39, 62 n.41 (1979). In reaching this conclusion, the Court noted that the Act was intended to apply to situations where an agency leases a redevelopment site in lieu of directly purchasing the realty for its facilities. *Id.* The Court found support for this conclusion in the following passage of the House Committee Report on S. 1, the bill that eventually became the URA:

> It makes no difference to a person required to move because of the development of a postal facility which

> method the postal authorities use to obtain the facility, or who acquires the site or holds the fee title to the property. *Since the end product is the same, a facility which serves the public and is regarded by the public as a public building, any person so required to move is a displaced person entitled to the benefits of this legislation.*

Id., quoting from H.R. Rep. No. 91-1656, p. 5 (1970) (emphasis added).

When federally financed public works projects require the removal or relocation of existing utility lines, the ownership of the underlying realty often remains unchanged. For example, title to real property may not be held by a government agency, that is, the agency may choose to use federal funds to lease realty from the owner and construct a public building or project on the leased property. Although the agency would not acquire fee simple title to the realty, it could still require utilities to relocate their lines. Despite the absence of any purchase or sale, the impact of the public works project remains the same—public utilities and other businesses are forced to relocate. Utilities, forced to move this personal property as a direct result of such acquisitions must incur relocation costs which are ultimately passed through to consumers in the form of increased rates. It makes little difference to these utilities and their customers which mode of federally funded acquisition causes the uprooting of lines and increased rates "since," as Congress stated, "the end product is the same." *Id.* The result is the federally financed *use* of property causing the displacement of, and injury to, public utilities and their customers. *Id.* For this displacement, the provisions of the URA and its legislative history, as interpreted by this Court, require reimbursement of utility relocation expenses without reference to the manner in which Federal funds accomplish the exclusive use and occupation of the realty in question.

C. Title III Of The URA Also Provides For Alternative Compensation To Utilities Forced To Abandon Or Relocate Their Lines

Even assuming, as petitioner contends, that Titles I and II of the URA do not create a uniform law that overrides common law rules relating to payment of utility relocation expenses, Title III of the URA would still require any agency acquiring real property to pay just compensation to any utility adversely affected by such acquisition. Under Title III, a utility could elect to receive such compensation in lieu of relocation payments.

Title III of the URA creates a uniform real property acquisition policy. Section 302(a) of that title provides:

> (a) *Notwithstanding any other provision of law,* if the head of a Federal agency acquires *any* interest in real property in any State, he shall acquire at least an *equal interest* in *all* buildings, *structures, or other improvements* located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be *adversely affected* by the use to which such real property will be put.

42 U.S.C. § 4652(a) (emphasis added). When a Federal or state agency[8] closes a street and acquires fee simple title it has acquired "any interest" in real property.[9] Neither the URA nor its legislative history defines "struc-

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[8] Section 305 of the URA (42 U.S.C. § 4655) makes Section 302 applicable to the states where a state agency acquires title. *See Whitman v. State Highway Commission of Missouri*, 400 F. Supp. 1050, 1070 (W.D. Mo. 1975).

[9] This language has been broadly defined. The Comptroller General of the United States has issued an opinion stating that the definition of "any interest in real property" found in Section 302(a) includes the acquisition of easements. 58 Comp. Gen. 559, 561 (1979).

tures or other improvements." However, the language of Section 302(a) makes clear that this phrase applies either to what must be removed from real property or to what "will be adversely affected by the use to which such real property will be put." 42 U.S.C. § 4652(a). Certainly, utilities forced to relocate or abandon utility lines as a result of the acquisition of real property are adversely affected within the plain meaning of this Section.

Moreover, Section 302 of the Act is designed to apply to owners of buildings, structures or other improvements who are not owners of the real property acquired.[10] Section 302(b)(1) refers to these owners as "tenants" and both the House and Senate reports provide that this Section applies to "the property of a tenant *or other person holding legal possession.*" [11] A utility holds legal possession, that is it has a legal right to occupy and use the land, even if it does not own the real property in which its structures or improvements are located.

Finally, it should be noted that although Section 302 of the Act does not provide for relocation costs it does provide for just compensation, which is defined as the greater of the "fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, *or* the fair market value of such building, structure, or improvement for removal from the real property . . . ." 42 U.S.C. § 4652(b)(1) (emphasis added).

In sum, even assuming petitioner's arguments are correct, respondent would still be eligible for certain reimbursements under Title III of the URA.

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[10] *See* 42 U.S.C. § 4652(b)(1). *See also* H.R. Rep. No. 1656, 91st Cong., 2d Sess. 24 (1970), *reprinted in* 1970 U.S. Code Cong. & Ad. News 5850, 5874; S. Rep. No. 488, 91st Cong., 1st Sess. 19 (1969).

[11] *Id.* (emphasis added).

III. COMPELLING PUBLIC POLICY CONSIDERATIONS SUPPORT AFFIRMANCE OF THE DECISION BELOW

A. Reversal Of The Decision Below Will Impose A Discriminatory And Disproportionate Burden On Utility Customers And Undermine Public Confidence In Federal And Federally Assisted Programs

If a utility is denied reimbursement for the considerable costs associated with the relocation of its distribution lines, it must pass these costs on to its customers in the form of increased utility rates. This result imposes an unfair and discriminatory burden on customers who are forced to pay higher utility bills in order to subsidize the costs of federally financed projects which benefit the community as a whole.[12] This disproportionate impact runs counter to the purpose of the URA "to establish fair and equitable treatment" for displaced persons "in order that such persons shall not suffer disproportionate injuries as a result of programs designed to benefit the public as a whole." 42 U.S.C. § 4621. The legislative history of the Act provides further evidence that Congress sought to avoid this harsh and inequitable result. As Representative Annunzio stated:

> As all of us recognize, rapid population growth and technological change make imperative the Federal programs to assist in building and rebuilding our cities . . . . These programs have been enacted and must go forward for the benefit of our entire society.

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[12] An example of this unfair burden can be found in communities where some residents use natural gas provided by distribution lines and other residents use fuel oil delivered by trucks. While both groups may be benefited by a public works project, the residents using natural gas are forced to pay relocation costs while the residents using fuel oil escape such costs entirely.

> But they should not impose an undue burden upon those individuals and businesses whose properties have to be acquired to make way for the necessary improvements to benefit the rest of us.

116 *Cong. Rec.* 40,171 (1970).

The costs of utility relocation are particularly burdensome to Brooklyn Union's low-income ratepayers who at present spend an increasingly large share of their incomes on natural gas for home heating purposes. In a time of rapidly rising natural gas prices and reduced Federal spending on low-income energy assistance and home insulation programs, many of this Nation's low-income utility customers already find it difficult, if not impossible, to pay their energy bills. Reversal of the Court of Appeals' decision would thus have an unjust and inequitable impact on those least able to afford it.

In addition to its inequitable impact upon utility ratepayers, denial of utility relocation expenses may also result in the erosion of public confidence in the Federal Government and the programs it sponsors. This is precisely the fear expressed by Senator Muskie in the Senate Report which accompanied the URA. In decrying the lack of uniform treatment displaced persons receive under existing Federal programs, the Senator warned:

> This lack of uniformity only provides irritation and confusion in the communities affected. It provides an unfortunate image of the Federal Government at the State and local level. It results in a continuing and annoying conflict between Federal agencies and State and local aid recipients. And it undermines confidence in and support for Government programs.

S. Rep. No. 488, 91st Cong., 1st Sess. 7 (1969). By affirming the Court of Appeals' decision, this Court would ameliorate the legislative, administrative, and financial

inequities which caused Congress justifiably to fear a loss of public confidence and support for programs which are so essential to the public health and to the continued growth and prosperity of our Nation's economy.

CONCLUSION

By recognizing respondent's right to recover utility relocation expenses under the URA, the Court of Appeals upheld the expressed intent of Congress to provide relief for all those displaced as a direct result of federally funded projects. In holding that utilities are "displaced persons," the Court properly construed the plain and unambiguous language of the URA to effect this broad congressional purpose and refused to read an exception into the Act where none was expressed or intended.

The decision below is entitled to affirmance on the grounds stated therein. This Court should also recognize that the URA grants reimbursement to those whose personal property is displaced as a result of the acquisition of the right to use real property in the execution of federally funded public works projects. This interpretation properly focuses on the *use* to which realty is put rather than the mode of acquisition or ownership. Such a holding would insure broad and uniform relief for all utility ratepayers who currently bear a disproportionate share of the costs of federally assisted projects. Finally, this Court should recognize that Title III of the URA provides for alternative compensation to utilities forced to abandon or relocate their lines.

This Court should act to implement the provisions of the URA consistent with the intent of Congress to treat all displaced Americans fairly and equitably. In so doing the Court will promote orderly planning and use of Fed-

eral resources and restore public confidence in Federal programs and projects.

Respectfully submitted,

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